

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

WAYNE ARNOLD,

Petitioner,

No. CIV S-01-1338 WBS DAD P

vs.

DAVID RUNNELS, Warden, et al.,

Respondents.

ORDER

Petitioner, a state prisoner proceeding pro se, has timely filed a notice of appeal of this court's April 4, 2005 denial of his application for a writ of habeas corpus. Before petitioner can appeal this decision, a certificate of appealability must issue. 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b).

A certificate of appealability may issue under 28 U.S.C. § 2253 “only if the applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). The certificate of appealability must “indicate which specific issue or issues satisfy” the requirement. 28 U.S.C. § 2253(c)(3).

A certificate of appealability should be granted for any issue that petitioner can demonstrate is “debatable among jurists of reason,” could be resolved differently by a different

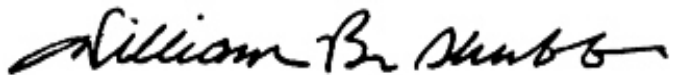
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1 court, or is “adequate to deserve encouragement to proceed further.” Jennings v. Woodford,
2 290 F.3d 1006, 1010 (9th Cir. 2002) (quoting Barefoot v. Estelle, 463 U.S. 880, 893 (1983)).¹

3 Petitioner has made a substantial showing of the denial of a constitutional right in
4 the following issue presented in the instant petition: whether jury instruction error violated
5 petitioner’s due process rights and prevented him from presenting his theory of the defense to the
6 jury.

7 Accordingly, IT IS HEREBY ORDERED that a certificate of appealability is
8 issued in the present action.

9 DATED: April 28, 2005

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11 WILLIAM B. SHUBB
12 UNITED STATES DISTRICT JUDGE

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25 ¹ Except for the requirement that appealable issues be specifically identified, the standard
26 for issuance of a certificate of appealability is the same as the standard that applied to issuance of
a certificate of probable cause. Jennings, at 1010.